

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-185667

DATE: May 18, 1976

MATTER OF: ABL General Systems, Corporation

DIGEST:

1. Protest against propriety of conduct of bid opening is untimely and will not be considered on its merits, since it was filed more than 10 days after bid opening, when basis for protest was known.
2. Determination by Government after bid opening of which of eight stepladder quantities, for which bids were solicited, to award is not improper. Also, contracting officer was not advised by inventory manager of quantity required until after bid opening, and inventory manager did not know who low bidder was on each quantity.

Invitation for bids (IFB) number N00383-76-B-0091 was issued by the Navy Aviation Supply Office, Philadelphia, Pennsylvania, on August 11, 1975, to solicit bids to furnish PP2581/A Power Supplies for the LAU-7/A launcher. Bids were requested on eight alternate, or "stepladder," quantities. Clause C-323 of the solicitation provided in part as follows:

"STEPLADDER QUANTITY BIDS REQUESTED

"BIDS ARE REQUESTED ON EACH ALTERNATE OR STEPLADDER QUANTITY SET FORTH FOR AN ITEM. AWARD, HOWEVER, WILL BE MADE FOR ONLY ONE OF SUCH STEPLADDER QUANTITIES OF AN ITEM. * * *"

Seven firms submitted bids, which were opened on October 20, 1975. The following is a partial reproduction of the Abstract of Bids showing the bids of ABL General Systems, Corporation (ABL), and Allied Technology, Inc. (Allied), the present supplier, on each of the alternate quantities:

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|--|----------|--------|--------|--------|--------|--------|--------|--------|
| (1) Item 0001: | AA | AB | AC | AD | AE | AF | AG | AH |
| (2) Quantity: | 1102 | 988 | 874 | 760 | 646 | 532 | 418 | 380 |
| (3) Allied: | \$839.00 | 853.00 | 870.00 | 883.00 | 903.00 | 931.00 | 943.00 | 958.00 |
| (Bid based on compliance with first article approval requirements) | | | | | | | | |
| (4) Allied: | \$823.00 | 835.00 | 849.00 | 859.00 | 875.00 | 897.00 | 900.00 | 911.00 |
| (Bid based on waiver of first article approval requirements) | | | | | | | | |
| (5) ABL: | \$846.87 | 848.28 | 850.05 | 852.35 | 855.47 | 859.93 | 866.81 | 870.03 |
| (Bid based on compliance with first article approval requirements) | | | | | | | | |

In a memorandum from the inventory manager dated November 11, the contracting officer was advised that 874 power supplies would be required. On the basis of that information, award was made to Allied on December 22 for 874 power supplies at \$849 each (subitem No. 0001-AC).

By letter dated December 29, ABL filed a protest with our Office against the award to Allied. In its protest, ABL alleges that no representative of the procuring activity was present at the bid opening, which was therefore conducted by the bidders. ABL also suggests that " * * the Procuring Activity took a period of ten weeks /from bid opening until award/ to obtain additional funding so that the present supplier Allied Tech Inc. would be awarded this contract. * * *" ABL argues that the award should instead have been based on a quantity determined at the time of bid opening.

Concerning the contention that no representatives of the procuring activity were present at bid opening, section 20.2(b)(2) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides in pertinent part: " * * bid protests shall be filed not later than 10 days after the basis for the protest is known or should have been known, whichever is earlier." Since the basis for ABL's protest concerning the propriety of the conduct of the bid opening was known on October 20, the bid opening date, the protest, filed by letter dated December 29, is untimely on that issue and will not be considered on its merits.

In regard to the delay in making the award, the Navy states in part as follows:

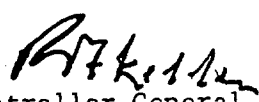
"* * * The solicitation was issued with stepladder quantities because it was unfeasible to determine with certainty the quantity that would be needed at the time award was expected to be made. The item being procured is a power supply for the LAU-7/A launcher. The launcher, which launches side-winder missiles, is used on many aircraft flown by foreign countries as well as by the United States Government. The contract awarded as a result of this solicitation provides for delivery of power supplies to Kuwait, Iran, and U. S. Air Stations for use on the F14A, TA4, A4, A6E, and A7E aircraft. Also being procured are power supplies to be delivered to U.S. stocks for replenishment purposes. Because of the wide application of the item, requirements and available funds change frequently between the time of issuance of the solicitation and the time award is to be made. In view thereof, it was considered necessary to issue the solicitation with stepladder quantities and to reserve determination on the exact quantity to be procured. In this case, the exact quantity to be procured was not made known to the contracting officer until 7 November 1975, at which time he received Exhibit 'H' /the November 11 memorandum from the inventory manager/. In solicitations of this type the inventory manager is not told who the low bidder is at the time he makes his determination of the quantity to be procured and, in this case, the inventory manager in fact did not know at the time he submitted Exhibit 'H' who the low bidder was on the various stepladder quantities. * * *"

Concerning ABL's arguments that award should have been based on a quantity determined at bid opening, and that the award was improperly delayed, we have held that provisions for bidding on alternate quantities with a determination by the Government after bid opening of which alternate to award is not improper. See 45 Comp. Gen. 651, 653 (1966). In this connection, circumstances prevented the contracting officer from determining which quantity of power supplies was required until his receipt of the memorandum dated November 11 from the inventory manager. Moreover, the Navy

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states that the inventory manager had no knowledge of who the low bidder was on each quantity. Accordingly, no bidder could have been prejudiced in the manner suggested by ABL by the delay in awarding the contract.

In view of the above, the protest is denied.


Deputy Comptroller General
of the United States